



California Fair Political Practices Commission

November 29, 1988

William R. Galstan
City Attorney
P.O. Box 130
Antioch, CA 94509

Re: Your Request for Informal
Assistance
Our File No. I-88-377

Dear Mr. Galstan:

You have requested informal assistance regarding the conflict of interest disclosure provisions and the campaign disclosure provisions of the Political Reform Act (the "Act").^{1/} Your letter poses general filing questions. Therefore, we treat it as a request for informal assistance pursuant to Regulation 18329(c).^{2/}

QUESTIONS

1. Is a gift of food or beverage provided to an official in the home of an individual excluded from disclosure on a statement of economic interests?
2. When both spouses are required to file statements of economic interests, what is the disclosure obligation when one of the filers receives a gift from which both spouses receive benefit?
3. Are there any limitations on the use of campaign funds in 1989 and subsequent years for campaign funds which were collected in 1988 or earlier years?

^{1/}Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/}Your letter states only a general question. Therefore, we consider it to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed). Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 84113; Regulation 18329(c)(3).)

CONCLUSIONS

1. A gift of food or beverage is excluded from disclosure on a statement of economic interests if the gift is provided to the filer in an individual's home.

2. Each spouse with an obligation to disclose gifts on his or her statement of economic interests must report the value of the portion of the gift received personally but is not required to report the portion received by his or her spouse.

3. Campaign funds collected in 1988 or earlier may be used to support or oppose a candidacy for elective office in 1989 and subsequent years only if the campaign funds are determined to be in conformity to the contribution limits of Proposition 73 and are properly segregated from nonconforming campaign funds.

ANALYSIS

Your first question involves general information about disclosing gifts of food or beverage on a Form 721, which is used by officials who file pursuant to Section 87200. This response is equally applicable to any filer who is required to disclose gifts under an agency's conflict of interest code. (Sections 87300, 87302.)

When a filer is required to report income which is a gift, the name, address, and a general description of the business activity, if any, of the donor, and the date and amount of the gift must be disclosed. (Sections 87207(a)(1), 87207(a)(4).) An exception to the required disclosure of gifts applies when there is a gift of hospitality involving food, beverages or lodging provided by an individual in his or her home to a public official. (Regulation 18727, copy enclosed.) Gifts of food or beverages provided to a public official by an individual, other than family members enumerated in Section 82028(b)(3), in locations other than the home of the donor must be disclosed. (Sections 82028, 87207(a) and 87302(a).)

The situation presented as an example for your second question involves the reporting requirements for gifts when both spouses have separate disclosure obligations under the conflict of interest provisions of the Act. When both spouses are required to file statements of economic interests, what are the disclosure obligations when one of the officials receives the gift of dinners for both spouses?

Income includes gifts. (Section 82030(a).) However, gift reporting requirements differ from other sources of income in at least two significant ways. First, a gift is reportable from any source located inside or outside of the filer's jurisdiction and regardless of whether or not the source of the gift has done or plans to do business in the filer's jurisdiction. (Section 82030(a).) Second, a gift to the spouse of a filer is the separate property of that spouse and the filer does not have to report on his or her statement of economic interest any income in which the filer has no community property interest. (In re Cory (1976) 2 FPPC Opinions 48, copy enclosed; see Section 82030(a).)

In your example, the husband and wife each received a gift of a free dinner. The husband and the wife are both required to file a statement of economic interests. The husband should report receiving a gift, if the value is \$50 or greater singly or in combination with other gifts during the reporting from the same source, but the value of his wife's dinner is not reported as a gift on the husband's statement of economic interests. (In re Cory, supra.) The wife has also received a gift of a dinner and she is required to report the value of the gift, if the value is \$50 or greater singly or in combination with other gifts during the reporting period from the same source. The wife is not required to report the gift of the husband's dinner. (In re Cory, supra.)^{3/}

The final question in your letter relates to uses of campaign funds in 1989 which were collected in 1988 or earlier years. Proposition 73, enacted in the June 1988 statewide primary election, provides that campaign funds possessed on January 1, 1989, may be used for any lawful purpose other than to support or to oppose a candidacy for elective office. (Section 85306.) Proposition 73 also imposes limits on campaign contributions to candidates and committees. (Sections 85301-85306.) The Commission has determined that Section 85306 prevents candidates from spending campaign funds received prior to January 1, 1989, to support or oppose a candidacy after that date unless the funds received are in compliance with the contribution limits of Proposition 73. Under emergency Regulations 18536-18536.2 and proposed Regulations 18536-18536.2 (copies enclosed), cash and cash equivalents possessed by a candidate or a committee prior to January 1, 1989, may be brought into compliance with the contribution limits of Section 85301 through 85305.

^{3/}Please note that in some factual situations a gift ostensibly given to the spouse of an official, may create a reporting obligation for the official. (Regulation 18726.5, copy enclosed.)

The procedure for determining whether all or part of any contribution may be used to support a candidacy starting on January 1, 1989, is outlined in Regulation 18536.1. Campaign funds which are not in conformity to the contribution limits of Sections 85301 through 85303 may be used for any lawful purpose other than personal use, as defined in Chapter 5 (commencing with Section 12400) of Division 9 of the Elections Code, and other than to support or oppose a candidacy for elective office. (Section 85306 and emergency and proposed Regulation 18536.2.)

Emergency Regulations 18536-18536.2 are effective now, but will be superseded by the proposed permanent regulations in the near future. Therefore, we advise you to follow the proposed permanent regulations, rather than the emergency regulations.

If you have further questions, please call me at (916) 322-5662.

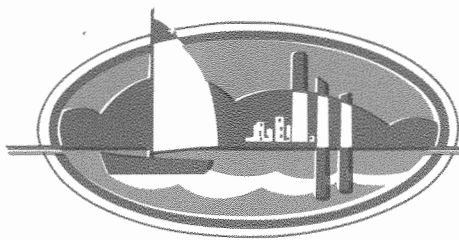
Sincerely,

Diane M. Griffiths
General Counsel



By: Bruce W. Robeck
Political Reform Consultant

DMG:BWR:kmt



ANTIOCH CA

CITY HALL • P. O. 100 • ANTIOCH, CA 94509-0504 • (415) 778-3502

WILLIAM R. GALSTAN
City Attorney

September 28, 1988

Fair Political Practices Commission
428 "J" Street -- Suite 800
P.O. Box 807
Sacramento, CA 95804-0807

Re: Request for Informal Assistance

Greetings:

Your informal assistance is requested on the matters stated herein. Question No. 1 is posed by myself, in my capacity as City Attorney. Questions 2 and 3 are posed by Cathryn Freitas, City Council member, whose mailing address is the same as is indicated on this letterhead. Mrs. Freitas has specifically authorized and requested me to seek your assistance.

Question #1. The instruction booklet for completing Form 721, Schedule "F" indicates that a filer is not required to report "gifts of food, drink or occasional lodging provided in an individual's home". The question is: are all gifts of food or drink excluded from reporting, or just those that are provided in an individual's home? It is unclear from the instruction whether the individual's home criteria applies only to lodging.

Question #2. Mrs. Freitas' spouse is also an elected official, being a Director of the Contra Costa Water District. To what extent must a spouse report on his or her disclosure form gifts that are received in the context of the other spouse's position? Example: Mr. and Mrs. Freitas attend a dinner function that triggers the reporting requirement. The function is associated with Mr. Freitas' duties with the Water District, and Mrs. Freitas attends merely in her capacity as his spouse. Must she report attendance at this function on her City Council disclosure form, or is it sufficient for Mr. Freitas to report it on his Water District form?

Fair Political Practices Commission
September 28, 1988
Page two

Question #3. This question relates to Proposition 73. Is there any prohibition from carrying on surplus campaign funds collected in one year to be spent in the following year? Is there any restriction, other than those already articulated in the statute¹ on how such surplus funds may be spent? Example: Mrs. Freitas collects funds in 1988 for her November 1988, City Council election campaign. Assuming that she has surplus funds, may she retain them into 1989 or following years to be spent on other political-related events, such as attendance at political fund-raisers?

Your prompt response to the above issues will be very much appreciated. The response may be directed to my attention. Thank you.

Very truly yours,



WILLIAM R. GALSTAN
City Attorney

WRG/kw

cc: Cathryn Freitas, Council Member
Mayor and Members of the City Council
Leland M. Walton, City Manager
Dorothy P. Marks, City Clerk

1 Elections Code §§12400 et seq.



California Fair Political Practices Commission

September 30, 1988

William R. Galstan
City Attorney
City Hall
P.O. 130
Antioch, CA 94509-0504

Re: 88-377

Dear Mr. Galstan:

Your letter requesting advice under the Political Reform Act was received on September 30, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5662.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to the information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Jeanne Pritchard
Jeanne Pritchard
Chief
Technical Assistance and Analysis
Division

JP:plh
cc: Cathryn Freitas, Councilmember